

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 97-125**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

a. Section ATPC 29.48 (2) requires a person who spills a pesticide to notify the Department of Natural Resources (DNR) “promptly.” The requirement of s. 292.11 (2), Stats., (note the renumbering) is that DNR be notified “immediately.”

b. Agencies may not create exceptions to statutory requirements unless the exceptions are authorized by the statutes. The statutes clearly authorize exceptions to the general pesticide regulations for experimental use of pesticides, for special local needs and for pesticides that are otherwise adequately regulated or that do not pose a threat to health or the environment. However, there does not appear to be similar authority for the department to issue permits for the use of a pesticide not otherwise permitted under ss. 94.67 to 94.71, Stats., in an emergency situation, as proposed in s. ATPC 29.70.

c. The rule should be reviewed to delete references to the Pesticide Review Board in accordance with the provisions of 1997 Wisconsin Act 27.

#### **2. Form, Style and Placement in Administrative Code**

a. The term defined in s. ATPC 29.01 (4) should follow the term defined in s. ATPC 29.01 (6) so that they are in alphabetical order.

b. The word “apply” should not be defined. This word occurs in other contexts than the application of pesticides. For example, the word “apply” is used in the phrase “does not apply”

in s. ATPC 29.20 (2) (intro.). If the phrase “apply a pesticide” is used consistently throughout the rule, that phrase could be defined. See, also, s. ATPC 29.01 (14), (15) and (16).

c. The definitions in s. ATPC 29.01 (11) and (12) should not cross-reference definitions within the same chapter. If these terms occur throughout ch. ATPC 29, the definition of the terms should be given in s. ATPC 29.01. For purposes of clarity in s. ATPC 29.54, it would be appropriate to define the terms in s. ATPC 29.01, and include a note in s. ATPC 29.54 (1) regarding the definitions in s. ATPC 29.01.

d. The introductory phrases in s. ATPC 29.10 (1) and (2) (intro.) are incorrectly drafted. Subsection (1) commences “Except as provided under sub. (2) . . . .” However, sub. (2) (intro.) commences “Subsection (1) does not apply . . .”, which negates the exception. The introductory paragraph of sub. (2) should be redrafted as follows: “The following persons are not required to obtain a license under sub. (1):”. See, also, s. ATPC 29.20 (1) and (2).

e. In s. ATPC 29.45, sub. (4) should begin on a separate line.

f. The terms “dual notice pesticide” and “agricultural pesticide” are defined in s. ATPC 29.60, and those definitions do not apply to s. ATPC 29.52. Therefore, the phrase “as defined in ss. ATPC 29.60 (4) and (9)” should be inserted following “dual notice agricultural pesticide” in s. ATPC 29.52 (1) (a). The same comment applies to the use of the term “pesticide treated seed” in s. ATPC 29.52 (7).

g. In s. ATPC 29.54, it seems unnecessary to define the terms “calibrate,” “injection unit” and “pesticide supply tank,” since these are readily understood terms. If the definition of “calibrate” is used to indicate what attributes must be considered in calibrating a piece of equipment, then it should be replaced by substantive provisions in the rule. The terms “barometric loop” and “gooseneck loop” are used in the section without either a definition or a description of what the terms mean. These terms should be clarified, unless they are understood terms of art.

h. In s. ATPC 29.54 (4) (a), the word “or” should be replaced by the word “and.”

i. Section ATPC 29.54 (7) (a) is written as if it describes the equipment, while it actually is listing duties of the equipment operator. It should be rewritten in the active voice, stating, for example, that the operator shall comply with ASSE Standard 1013-80.

j. The Note following s. ATPC 29.54 (7) (e) should include an address at which the documents can be viewed or obtained.

k. In s. ATPC 29.54 (7) (g), the word “shall” should follow the word “orifice.”

l. The last sentence of s. ATPC 29.62 (2) should read: “A sign under this subsection shall comply with sub. (1) (b) to (f).”

m. Section ATPC 29.63 (1) (a) duplicates the definition of “emergency.” It should read simply: “There is an agricultural emergency.” Also, par. (b) should require that the agricultural employer rather than the early entry comply with the cited standards.

n. Sections ATPC 29.64 and 29.65 could be combined to eliminate duplication of language. Also, note that there are minor wording differences between the statement of trainer qualifications in these two sections, which do not seem to be substantive.

o. In s. ATPC 29.70 (1), the reference to “ss. 94.67 through 94.71” should be replaced by the reference “94.67 to 94.71.” [See, also, s. ATPC 29.71 (1).]

p. In s. ATPC 29.71 (8), whose obligation is it to comply with the stated labeling requirements? This provision should be rewritten in the active voice clearly assigning the duty.

q. In the first sentence of Appendix A, it appears that the reference to “29.56 (3)” should be replaced by the reference “29.56 (2).”

r. The repeal and recreation of ch. ATPC 30 (title) should precede all other treatments of material in ch. ATPC 30, including the repeal of the titles of subchs. I, II and III.

s. Subchapters II to VII of ch. ATPC 30 each consist of a single section. These do not appear to warrant separate subchapters bearing the same title as the single section in each of them. It is suggested that these be consolidated into a single subchapter, which could be titled “**General**” or “**Pesticides other than atrazine pesticides.**”

t. In s. ATPC 30.10 (3) (g), the correct reference appears to be “sub. (7) (b).”

u. Section ATPC 30.10 (7) (c) 4. refers to landfills approved by the DNR. To what approval does this refer? Does it mean landfills licensed under s. 289.31, Stats.?

v. The title to s. ATPC 30.10 (9) should read: “SODIUM FLUOROACETATE OR STRYCHNINE SALES.”

w. In s. ATPC 30.19, the notation “ATPC” should be inserted before the section number.

x. Section ATPC 30.22 (6) (b) 3. is superfluous and should be omitted.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The cross-reference to the U.S. Code in s. ATPC 29.01 (19) should also include the last section of the federal act, rather than using “*et seq.*”.

b. The analysis of the rule indicates that fees are modified “. . . to reflect changes proposed in the 1997-99 biennial budget bill.” The department should compare the final version of that bill, 1997 Wisconsin Act 27, with the rule to ensure that they are consistent.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The Notes after s. ATPC 29.01 (29) and (30) would be more useful if they described the purpose of the reference to s. ATPC 29.50 (2).

b. It is not clear why the definition of “pest” needs to be in a separate section in s. ATCP 29.02. This definition does not appear to be any different than the definition in s. ATCP 29.01. The authority granted to the department under s. 94.69 (1), Stats., could be accomplished by a definition in s. ATCP 29.01. The department should consider whether s. 94.69 (1), Stats., is intended to be the authority for a broad definition of “pest,” or whether this statute is authority for the department to take action with respect to individual pests. Further, the department should consider whether any definition of “pest” is necessary. As the Note acknowledges, pesticides may be used against a “pest” only if the pesticide is registered and labeled for that purpose. The definition does not contribute anything to the understanding of how a pesticide may be used.

c. “Relevant” is used in s. ATCP 29.12 (2) (intro.) and should be deleted from s. ATCP 29.12 (2) (a) and (c).

d. The recordkeeping requirements in s. ATCP 29.15 (8) (intro.) require legibility and require the person retaining records to make them available for inspection and copying upon request. Other recordkeeping requirements in the rule, such as those in s. ATCP 29.12, are not consistent with these requirements.

e. Section ATCP 29.20 (1) (intro.) refers to an “annual” license. However, it does not appear that there is any other type of license than an annual license in ch. ATCP 29.

f. It is not clear how a license fee for a new business location, which may be added during the year, relates to the “annual” license fee required under s. ATCP 29.20 (6).

g. In s. ATCP 29.26 (10) (a) 1., should “as determined by the department” be added at the end to clarify who makes this determination?

h. In s. ATCP 29.56 (1) (e) 2., the comma should be omitted.

i. Section ATCP 29.61 (3) is unclear as written.